IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. No.21/Rjt/2020
(Assessment Year: 2016-17)

Shri Shitalbhai Rasiklal Ravani, Flat No. 04/202, Sulabh Apartment, Jagnath Plot Street No. 06, Dr. Yagnik Road, Rajkot-360001	Vs.	Chief Commissioner of Income Tax (TDS), Ahmedabad-380009
[PAN No.ABOPR5700M]		
(**Appellant**)	..	(**Respondent**)

Appellant by :	Written Submission
Respondent by:	Shri Shramdeep Sinha, CIT DR

Date of Hearing	07.08.2023
Date of Pronouncement	18.10.2023

O R D E R

PER SIDDHARTHA NAUTIYAL, JM:

This appeal has been filed by the assessee against the order passed by the Ld. Chief Commissioner of Income Tax (TDS), (in short "Ld. CCIT(TDS)"), Ahmedabad in Letter No. ITBA/COM/F/17/2019-20/1022759459(1) vide order dated 20.12.2019 passed for Assessment Year 2016-17.

2. The assessee has taken the following grounds of appeals:-

> "***a.*** *Whether on the fact and in circumstances of the case, an original order under Section 119(2)(a) read with Section 201(1) (IA) and Section 220(2A) by the Chief C.I.T. (TDS), Ahmedabad for waiver is erroneous in law and in facts specially when there was no separate Individual name application for waiver of interest made by the assessee u/s. 220(2A) of the Act before him and also no separate*

Individual order u/s. 201 (1A) for levy of interest made by the Income tax Officer (TDS), Rajkot, as such impugned order is unwarranted, unjustified and bad in law. The same may be quashed.

b. *Without prejudice to the ground above, the Chief C.I.T. (TDS), Ahmedabad was justified in law in ignoring various facts material placed and scope of three conditions u/s.220(2A) laid down in the Act. Further no separate individual name application for waiver of interest was made by the assessee and no separate order for levy of Interest made by the ITO (TDS),Rajkot and the Section 220(2A) is a quasi judicial in nature for grating waiver of interest etc. were not considered the claim favorably in light of the law when it was in vogue on reasonable cause being shown. The decision taken by the Chief CIT (TDS) in the order is not sufficient and was totally laconic with reference to a various numbers of decisions of Hon Supreme Court and High Courts. Therefore, the order by the Chief C.I.T.(TDS) is required to be quashed. The same may be quashed.*

c. *Without prejudice to the grounds above, the learned the Chief C.I.T. (TDS) is erred in taking full share of amount of levy of interest u/s. 201(1A) as against 1/2 share in the property (flat) in question. The correct amount of 1/2 share is Rs. 72.602/- instead of 1,45,203/- full share in the property (flat). The same may be corrected."*

3. The facts of the case are that the assessee and his wife purchased an immovable property at Mumbai for a consideration of Rs. 3,72,31,560/- on 19.10.2015, but failed to deduct tax at sources as required u/s 194lA of the I.T. Act, 1961. Therefore, the ITO TDS-2, Rajkot required the applicants to show cause why they should not be treated as an assessee in default within the meaning of Section 201 (1) for not deducting tax of Rs.3,72,315/- i.e. @ 1% of the sale consideration, and why interest @ 1% p.m. should not be charged for the period of default. Vide order dated 25.03.2019, the explanation offered by the applicants were rejected by the ITO TDS-2 and interest of Rs. 1,45,203/- u/s 201(A) of the Act was levied.

4. In respect of above interest of Rs. 1,45,203/- levied under Section 201(A) of the Act, the applicants (the assessee and his wife) filed application/ appeal before Ld. CCIT(TDS). In the application before Ld. CCIT(TDS), the assessee stated that due to non-awareness of the provisions of Section 1941A of the Act, they have given the cheque of Rs. 3,27,316/- towards TDS to the seller of the property on 27.09.2015, but the seller did not deposit the same into the govt. account. Thus, it was due to misunderstanding between the assessee and seller the default in payment of TDS had occurred. Accordingly, the assessee requested the Ld. CCIT(TDS) for waiver of interest us 220(2A) of the Act, claiming that there was sufficient and reasonable cause for non-payment of TDS. In appeal, Ld. CCIT(TDS) dismissed the application for waiver of interest filed by the assessee, with the following observations:

> *"4. The contentions of the applicants made through application dated 27.04.2019 and submission dated 05.12.2019 have been considered. The assessee requested that their application may be considered in the light CBDT Circular dated 27.03.2017. Circular No.11/2017 dated 24.03.2017 (not 27.03.2017 as mentioned by the applicant) stipulates certain class of cases in which the reduction or waiver of interest under section 201(1 A) can be considered, which are as under.*
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> > *"**2.** The class of cases in which the reduction or waiver of interest under section 201(1A)(i) can be considered, are as follows:*
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> > > *(i) Where during the course of proceedings for search and seizure under section 132 of the Income-tax Act, or otherwise, the books of account and other documents necessary for making deduction under Chapter XVIIB of the Act were seized and the assessee was not able to, within the time specified, deduct tax at source from any sum credited to any account (whether called "suspense account" or by any other name) in his books of account.*

(ii) Where any sum paid or payable was not liable for deduction of tax at source in the case of a deductor on the basis of any order passed by the jurisdictional High Court, and as a result, he did not deduct tax at source in relation to such sum, and subsequently, in consequence of any retrospective amendment of law or a decision of the Supreme Court of India or a decision of a Larger Bench of the jurisdictional High Court (which was not challenged before the Supreme Court and has become final) in any proceedings, as the case may be, tax was held to be deductible or the tax deducted by the deductor during such financial year was found to be less than the tax deductible on such sums paid or payable.

(iii) Where the default under section 201 relates to non-deduction or a lower (deduction of tax under section 195 of the Act in respect of a payment made to a non-resident (including a foreign company) being a resident of a country or specified territory outside India with whom India has entered into an agreement referred to in section 90 or 90A of the Act, and where —

> *(a) a dispute regarding the tax payable in India in respect of the payment had been referred to the Competent Authority in India mentioned in Rule 44H of the income-tax Rules, 1962 under the said agreement under section 90 or 90A of the Act;*
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> *(b) such reference had been received by the Competent Authority in India within a period of two years of the date on which the notice of demand determining the tax payable was received by the person in default under section 201;*
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> *(c) the dispute has been settled by way of a resolution arrived at under the Mutual Agreement Procedure (MAP) provided in the said agreement: and*
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> *(d) the person in default under section 201 has given his acceptance to the resolution and has withdrawn his appeal(s) pending on the issue, within the meaning of sub-rule (4) of Rule 44H of the Income-tax Rules, within a period of one month of the date on which the resolution is communicated to him."*

4.1 From the above, it is clear that the case of the applicant is not covered in any of the conditions stipulated in para 2(i) to 2(iii) the Circular No.11/2017 dated 24.03.2017 relied on by the applicant. Thus, the request of the applicants for waiver of interest charged u/s 201(1A) of the Act cannot be entertained as the same is not covered in any of the class of cases mentioned the said Circular.

4.2 Apart from the above, the applicants have also claimed that their application may be considered u/s 220(2A) of the I.T. Act. It is pertinent to mention that section 220(2A) of the Act provide for waiver of interest charged u/s 220(2) of the Act, whereas in the case of applicants the interest requested to be waived has been charged u/s 201(1 A) of the Act. Thus, the request of the applicants for waiver of interest charged u/s 201(1 A) of the Act cannot be considered u/s 220(2A) of the Act. Waiver of interest charged u/s 201(1 A) of the Act is provided in Circular No.11/2017 dated 24.03.2017 issued by the CBDT, New Delhi. As already held above, applicant's case is not covered in any of the class of cases mentioned in the said Circular.

5. Considering the above facts, the application seeking waiver of interest of Rs. 1,45,203/- charged u/s 201(1A) of the Income Tax Act, 1961 for the Financial Year 2015-16 relevant to A.Y. 2016-17 cannot be entertained and hence the same is hereby rejected."

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CCIT(TDS) under Section 119(2)(a) r.w.s. 201(1A) and 220(2A) of the Act. Before us, the assessee is filed their written submissions in support of the case. At the outset, the Ld. DR submitted that the aforesaid appeal as not maintainable before ITAT since there is no provision under Section 253 of the Act (Appeals to the Appellate Tribunal), for filing of appeal against the order passed by Ld. CCIT(TDS) under Section 119(2)(a) r.w.s. 201(1A) and 220(2A) of the Act. It was submitted that Ld. CCIT(TDS) disposed of the application

filed by the assessee and his wife requesting for waiver of interest imposed by the TDS officer for non-deduction of taxes at source towards purchase of property. However, it was submitted that as per Section 253 of the Act, there is no such sub-Section under which appeal could be filed before the Tribunal, and accordingly the present appeal is not maintainable in the first instance.

6. We have been perused the rival contentions and the material available on record. Section 253 provides for an appeal before this Tribunal against the orders mentioned therein. For the purpose of clarity, the provisions of Section 253 are reproduced hereunder:

> *"Appeals to the Appellate Tribunal.*
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> *253. (1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—*
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> *(a) an order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a Commissioner (Appeals) under Section 154, Section 250, Section 270A, Section 271, Section 271A 90[, Section 271AAB, Section 271AAC, Section 271AAD], Section 271J or Section 272A; or*
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> *[(aa) an order passed by a Joint Commissioner (Appeals) under Section 154, Section 250, Section 270A, Section 271, Section 271A, Section 271AAC, Section 271AAD or Section 271J; or]*
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> *(b) an order passed by an Assessing Officer under clause (c) of Section 158BC, in respect of search initiated under Section 132 or books of account, other documents or any assets requisitioned under Section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; or*
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> *(ba) an order passed by an Assessing Officer under sub-Section (1) of Section 115VZC; or*
> *(c) an order passed by,*

(i) a Principal Commissioner or Commissioner under Section 12AA or Section 12AB or under clause (vi) of sub-Section (5) of Section 80G or under Section 263 or under Section 270A or under Section 271 or under Section 272A or an order passed by him under Section 154 amending any such order; or

(ii) a Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General or a Principal Director or Director under Section 263 or under Section 272A or an order passed by him under Section 154 amending any such order; or]

(d) an order passed by an Assessing Officer under sub-Section (3), of Section 143 or Section 147 or Section 153A or Section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under Section 154 in respect of such order; †or

(e) an order passed by an Assessing Officer under sub-Section (3) of Section 143 or Section 147 or Section 153A or Section 153C with the approval of the Principal Commissioner or Commissioner as referred to in sub-Section (12) of Section 144BA or an order passed under Section 154 or Section 155 in respect of such order; †or

(f) an order passed by the prescribed authority under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of Section 10.

*(2) The Principal Commissioner or Commissioner may, if he objects to any order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, *a 92[the Joint Commissioner (Appeals) or the] Commissioner (Appeals) under Section 154 or Section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against the order."*

7. In our considered view, the Ld. DR is correct in submitting that the present appeal is not maintainable before the Tribunal in absence of any specific provision to the effect which allows the assessee to file the present appeal. Accordingly, in our considered view, the present appeal is not maintainable and hence the present appeal is being dismissed as non-maintainable. In the case of **Sub-Registrar Office, Meppayur-Kozhikode v. Director of Income-tax (Intelligence) in IT Appeal No.**

280 (Coch.) of 2013, the ITAT Cochin Bench held that appeal cannot be entertained by Tribunal as it is not appealable before Tribunal as per Section 253. While passing the order, ITAT made the following observations:

> *"Nowhere in Section 253 mentions the order passed by Director of Income-tax (Intelligence) or any other officer of the Income-tax Department levying penalty u/s 271FA is appealable before this Tribunal.* ***This Tribunal being a quasi judicial authority established under the provisions of the Income-tax Act cannot travel beyond the provisions of the Act. Therefore, unless and until an appeal is specifically provided in Section 253 of the Act against the order levying penalty u/s 271FA, this Tribunal is of the considered opinion that the present appeal is not maintainable before this Tribunal.****"*

8. Similarly, in the case of **Sale Mohd Padamsee & Co. 112 taxmann.com 72 (Mumbai - Trib.)**, the ITAT held that order under Section 220(6) passed by Principal Commissioner declining grant of stay during pendency of appeal before Commissioner (Appeals) is only an administrative order which could only be passed when Assessing Officer declines to exercise his powers of granting stay under Section 220(6) and such an administrative order is not appealable before Tribunal. While passing the order, ITAT made the following observations:

> *"****7. Obviously, there is no mention about orders passed under Section 220(6) in the list of orders which can be appealed against before the Tribunal, and the right to appeal has to be a specific right conferred by the statue; such a right cannot be assumed or inferred****. In our humble understanding, therefore, the orders passed under Section 220(6) cannot be appealed against before this Tribunal. The present appeal is, therefore, not a maintainable appeal before us."*

9. In the case of **Rajya Krishi Utpadan Mandi Parishad57 taxmann.com 3 (Lucknow - Trib.) (TM)**, the ITAT held that order

passed by Commissioner (Appeals) on application seeking stay of demand is not a final order and, thus, such an order is not appealable before Tribunal.

10. In light of the facts of the present case and the judicial precedents on the subject, as highlighted above, the appeal of the assessee is dismissed as non-maintainable.

This Order pronounced in Open Court on	**18/10/2023**

Sd/-	**Sd/-**
(ANNAPURNA GUPTA)	**(SIDDHARTHA NAUTIYAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 18/10/2023
TANMAY, Sr. PS ***TRUE COPY***

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजोकट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजोकट / ITAT, Rajkot